IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5345 of 1995
With
FIRST APPEAL No. 5334 of 1995
To
FIRST APPEAL No. 5344 of 1995
With
FIRST APPEAL No. 5346 of 1995
To
FIRST APPEAL No. 5361 of 1995
With
FIRST APPEAL No. 3788 of 1995
To
FIRST APPEAL No. 3817 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANBHAI MOTIBHAI PATEL & 6 - Appellant(s)
Versus
SPL.LAND ACQUISITION OFFICER & 1 - Defendant(s)

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Appearance :

MR JITENDRA M PATEL for Appellant(s) : 1,
(MR MJ TRIVEDI) for Appellant(s) : 1,
MR S.R.GORI for Respondent (s) : 1,
MR YN RAVANI for Respondent (s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE R.P.DHOLAKIA
Date : 25/04/2006

COMMON C.A.V. JUDGMENT

(Per : HONOURABLE MR.JUSTICE MR. R.P.DHOLAKIA)

1.Before effective hearing, Mr.Jitendra M.Patel, learned counsel for the appellants, sought permission of the Court to reduce the rate as prayed for in the appeals from Rs.18/- to Rs.10/- per sq.ft. Permission was accordingly granted.

2.First Appeal No.5345 of 1995 with First Appeal Nos.5334 to 5344 of 1995 with First Appeal Nos.5346 to No.5361 of 1995 were filed by the claimants under Sec.96 read with Order 41 Rules 1 and 2 of CPC, challenging the impugned common judgment and award passed by the Reference Court in Land Reference Case Nos.79 to 96 of 1998 and Nos.98 to 107 of 1998 under Sec.18 of the Land Acquisition Act (hereinafter referred to as `the Act' for short) whereas cross appeals being First Appeal Nos.3788 to

3817 of 1995 were filed by the Gujarat Housing Board.

3.As there are identical facts involving common question of law on the basis of which two orders dated 19-2-1986 and 18-3-1995 have been challenged, we propose to decide all these First Appeals by this common judgment.

4.We have heard the learned counsel, Mr.Jitendra M.Patel for the appellants, Mr.S.R.Gori, learned Asstt. Govt. Pleader for the respondent No.1 and Mr.Y.N.Ravani on behalf of the respondent No.2-Gujarat Housing Board in respect of the impugned judgment and have examined the evidence on record. We have also perused the original record and proceedings which are available with us.

5.We do not propose to enter into a detailed discussion on the facts of each case except to state that all these lands were acquired for construction of residential buildings by Gujarat Housing Board by a notification issued

under Sec.4 of the Act dated 30-8-1973 followed by Sec.6 notification dated 19-8-1976 resulting in the Land Acquisition Officer's award dated 19-2-1986.

6.As per the award of the Land Acquisition Officer, the claimants were offered Rs.0.85 per sq.ft. of land as against the claim of Rs.4.85 per sq.ft. The Reference Court, while deciding the references under Sec.18 of the Act enhanced the same to Rs.6.35 per sq.ft. granting an additional amount of Rs.5.50 per sq.ft. It is this common judgment and awards passed under Sec.18 by the Reference Court, which is the subject matter of the present group of appeals.

7.Mr.Patel for the appellants drew our attention towards the judgment and awards passed by the court below together with sale instances of nearby land and other documents to prove their claim of fixing the rate at Rs.10/- per sq.ft.

8.It appears that the Reference Court while

enhancing the rate considered various judgments, plus and minus factors and also compared the sale instances of nearby lands. The Reference Court, taking sale deed Ex.54 of Mahavir Co.Operative Housing Society as the base for fixing the rate keeping in mind Sec.4 notification of the year 1973 and also the price escalation over a period of six years @ Rs.4.65/- per sq.ft. and by deducting 10% towards development charges vis-a-vis area of the land, held that appellants were entitled to Rs.8.15 per sq.ft. However, the Reference Court came to the final conclusion that if market value of the land in question is fixed at Rs.5.50/-, it will be just and proper and enhanced the rate accordingly.

9. The aforesaid finding of the Reference Court is contrary to its own conclusion and has been without any base or assigning any reasons thereof. Since the Reference Court considered various judgments including the judgments of

the Apex Court and the High Court as well as the sale instances of nearby land, if the rate at Rs.8.15/- per sq.ft would have been fixed, said finding would have been proper and justifiable. Having not done so, the impugned judgment is required to be interfered.

10.As far as rate at Rs.10/- per sq. ft. as sought to be fixed by Mr.Jitendra Patel is concerned, no convincing arguments have been advanced by him. Hence, the prayer for fixing the rate at Rs.10/- per sq.ft. cannot be granted.

11.As far as cross appeals fled by the Gujarat Housing Board are concerned, Mr.Ravani concentrated his arguments on the rate of interest. Drawing our attention towards the present market rate and other aspects, he submitted that if rate is reduced to 9% per annum then, it will meet the ends of justice.

12.We agree with the above argument and we are of the opinion that the claim as made by the

Mr.Ravani is justified.

13.Looking to the facts and circumstances of the case, we are satisfied that the impugned judgment and awards do merit interference in these appeals.

14.In view of the above, all the appeals filed by the appellants-claimants are partly allowed to the extent that the claimants will be entitled for the compensation of Rs.8.15 ps. per square feet, in all, with the rate of interest @ 9% p.a. Rest of the order passed by the Reference Court is not interfered.

All the cross appeals filed by the appellants-Gujarat Housing Board are partly allowed only to the extent of rate of interest i.e. 9%. However, there shall be no order as to costs in all these appeals.

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(B.J.SHETHNA,J.)

(R.P.DHOLAKIA,J.)

Further Order

At this stage, a request was made by learned

counsel, Shri Patel for the appellants-claimants that the respondent-Housing Board be now directed to deposit the amount, with interest, as awarded by this Court, by this order. Learned counsel, Shri Ravani for the Gujarat Housing Board stated that they will try to deposit the difference of awarded amount with interest at the rate of 9% as early as possible and preferably by 31-7-2006.

In view of this, no further directions are required to be issued by this Court for the purpose of depositing the awarded amount with interest.

(B.J.SHETHNA,J.)

(R.P.DHOLAKIA,J.)

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